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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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1                   RECORD OF ORAL HEARING  
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3                   UNITED STATES PATENT AND TRADEMARK OFFICE  
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6                   BEFORE THE BOARD OF PATENT APPEALS  
7                   AND INTERFERENCES  
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10                  Ex parte ROBERT GEORGE BEAN, CLARK EDWARD LUBBERS,  
11                   and RANDY L. ROBERSON  
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14                  Appeal 2008-0944  
15                  Application 10/669,196  
16                  Technology Center 2100  
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19                  Oral Hearing Held: May 22, 2008  
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23                  Before JAMES D. THOMAS, ALLEN R. MACDONALD, and ST. JOHN  
24                  COURTENAY III, Administrative Patent Judges.  
25

26                  ON BEHALF OF THE APPELLANTS:  
27

28                  MICK MCCARTHY, ESQUIRE  
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35                  The above-entitled matter came on for hearing on Thursday, May 22,  
36                  2008, commencing at 1:45 p.m., at The U.S. Patent and Trademark Office,  
37                  600 Dulany Street, Alexandria, Virginia, before Dominico Quattrociocchi,  
38                  Notary Public.

1           JUDGE THOMAS: Counsel, have you been to the Board before?

2           MR. McCARTHY: No, Your Honor.

3           JUDGE THOMAS: Okay. You have 20 minutes to present your  
4 arguments. To help guide your time, you can use that clock as a guide.

5           MR. McCARTHY: Okay.

6           JUDGE THOMAS: You may proceed at any time.

7           MR. McCARTHY: Thank you, Your Honor.

8           JUDGE MacDONALD: Before we begin, I have one question  
9 because I didn't see it in the record but I thought it was the case and I wanted  
10 to double-check. Figures 3A and 3B which are on the same sheet together,  
11 are those the prior art?

12          MR. McCARTHY: I would characterize those as related art; yes,  
13 Your Honor. Yes.

14          JUDGE MacDONALD: Okay. Well, let me ask the question again  
15 since you changed the language. Is that the prior art? Yes or no.

16          MR. McCARTHY: I don't know that it's an admission of prior art. I  
17 do know that it's related. It's not part of this invention. This invention  
18 distinguishes from that related art; yes.

19          May it please the Board. My name is Mick McCarthy from the  
20 McCarthy Law Group in Oklahoma City, here today representing Seagate  
21 Technology, LLC in this case.

22          Obviously the best value for my time today is to answer any questions  
23 and address any clarifications that you may have about this case; but if you  
24 will indulge me, I would like to take just a brief amount of time, and in  
25 looking over the case, I think there are four points that I'd like to emphasize  
26 for your consideration today.

1       The first one would be, my first point would be: Claim 1 recites  
2 storing first information with first data. Okay? Figs. 4A and 4B of the  
3 application clearly show a block of data and that block of data includes an  
4 appended portion of information. Within that appended portion is the data  
5 reliability qualifier bit. The DRQ bit resides in this block 424A.

6       So, as you can see, the structure that we are disclosing here is that our  
7 DRQ bit, our first information, is stored with the user data itself in block  
8 410.

9           JUDGE COURTENAY: Yes; but as you're well aware, we're not  
10 permitted to read those limitations from your specification into claim.

11          JUDGE MacDONALD: The examiner -- from reading your brief and  
12 reading the answer, it's clear that you're both looking at the same thing and  
13 disagreeing over the requirements of the claim language with respect to the  
14 word "with."

15          My understanding is, you read it as it requires essentially sequential  
16 location in memory; and the examiner read it as, it requires that they be  
17 together in the memory somewhere.

18          MR. McCARTHY: The officer's position is, even if the claim  
19 language had the word "together" in it that it still would not require that the  
20 first information be stored, say, as -- as is disclosed in the preferred  
21 embodiments, within the same logical-block address.

22          The point is that data -- the skilled artisan, having read this  
23 specification, will understand and will know that data must be stored to an  
24 address.

25          In the specification, the only embodiments disclosed are that the first  
26 information is either appended to that data or it is embedded in that data.

1        There's no hint or suggestion that this invention in any way  
2    contemplates that first information, that first data being stored with each  
3    other but yet residing at different locations on a disk or depicted within  
4    different blocks but within the same rate array.

5           JUDGE MacDONALD: But isn't the related art which is not this  
6    invention -- doesn't it also say that these two pieces of information are  
7    associated with each other and uses that phrase, "associated with?"

8           MR. McCARTHY: I don't know where "associated with" is relevant  
9    to the claim language.

10          JUDGE MacDONALD: Well, the word "with."

11          MR. McCARTHY: What we are saying is that first information is  
12    stored with the first data.

13          Your question was to Figs. 3A and 3B; and sure enough, we talk  
14    about another way of doing this.

15          JUDGE MacDONALD: I'm more concerned about the language you  
16    used to describe this which was, for example, an FE bit in portion 318 of  
17    drive 310 is associated with data block one.

18          MR. McCARTHY: I understand. But why is that relevant to --

19          JUDGE MacDONALD: Well, I'm asking. Why would an artisan  
20    read the word "with" in claim 1 and understand it to mean what you're  
21    saying it means?

22          MR. McCARTHY: Because the argument, the position is that storing  
23    data with other data has to reside at the same address, whether that's a block  
24    address or some functional, there's some functional --

1           JUDGE MacDONALD: Well, let me ask the same question that the  
2 examiner asked. Why would the word "with" alone convey that? Doesn't it  
3 require further language, as the examiner pointed out?

4           MR. McCARTHY: I don't believe so because the officer's position  
5 was -- its first position was in --

6           JUDGE COURtenAY: Couldn't the word "with" mean  
7 simultaneous in time?

8           JUDGE MacDONALD: Rather than location?

9           MR. McCARTHY: I don't believe so within the broadest, reasonable  
10 interpretation of what that claim language means and given the  
11 enlightenment of the spec.

12          JUDGE MacDONALD: I think at that point you're reading  
13 limitations in from the specification rather than merely enlightening.

14          MR. McCARTHY: Well, we have to interpret the claim language  
15 given the benefit of the enlightenment from the spec; and the spec only talks  
16 about either appending the data or embedding the data.

17          JUDGE MacDONALD: But actually the spec also talks about the  
18 sequentially-in-time storage because that's what it describes as the related art  
19 where it does two storage steps.

20          MR. McCARTHY: Okay. The office points to the decided reference  
21 and it shows the very same structure that we are distinguishing in our  
22 specification. The FE bit table is here.

23          We are saying that we are eliminating the FE bit with the structure in  
24 our invention, and we go on to name a good number of advantages to doing  
25 so. Okay?

1       Now, your question was could we add language to more particularly  
2 point out and distinguish the invention? Yes, we could.

3       JUDGE MacDONALD: Let me rephrase this, what I'm seeing when I  
4 look at claim 1. You have a description in your specification of related art  
5 which corresponds to the reference the examiner found.

6       MR. McCARTHY: Yes.

7       JUDGE MacDONALD: You have your description of your invention.

8       MR. McCARTHY: Yes.

9       JUDGE MacDONALD: I read the claim and I go: That looks like  
10 both the related art and the described invention. Why would an artisan go:  
11 Wow. They're trying to claim what's essentially the prior art at that point.

12       MR. McCARTHY: Because we believe that the skilled artisan,  
13 having read the Louver's reference and seeing the FE bit structure where you  
14 have the data in one block and you have the forced-error bits in a separate  
15 block -- and then you read our specification where we say we're going to  
16 eliminate that structure by storing them together, storing them with each  
17 other.

18       JUDGE MacDONALD: You're focusing though on the structure and  
19 I'm looking at it going: Wow. I've read the FE bit, the related art, and it  
20 stores one with the other sequentially with being -- step A is done with step  
21 B, not that they're storing at the same location.

22       That word "with" is quite broad.

23       MR. McCARTHY: Yes, it is.

24       JUDGE MacDONALD: Together it can be an act -- two acts that are  
25 done together in time versus --

1           MR. McCARTHY: That point was not brought up during the  
2 prosecution. I grant, you know, it's a decent argument. It didn't come up  
3 during prosecution.

4           I would simply say neither the Louver's reference nor our  
5 specification addresses storing them sequentially in time. I don't think that's  
6 enough to outweigh what the skilled artisan would understand about the  
7 nature of storing data.

8           When you store "A" with "B," they have to be together; otherwise,  
9 they're arbitrarily.

10          I mean, you would agree with me that storing data is different than  
11 deleting data; and if I arbitrarily store the information at one place on the  
12 disk and the other information at another place on the disk and the system  
13 doesn't know where those two are, then the data is essentially lost. Okay?  
14 Storing it --

15          JUDGE COURTENAY: We have files stored on a disk drive. We  
16 have a plurality of files. You have File A stored with File B on a disk drive.

17          MR. McCARTHY: Exactly. Exactly. And with the FE bit table,  
18 that's one of the advantages that we eliminate by storing the information  
19 with the data, is we eliminate the entire mapping and maintenance of that  
20 association between where's the metadata and where is the user data? It's  
21 here. It's here. Well, if they were with each other, we wouldn't have to do  
22 that because they'd be stored with each other. Okay?

23          JUDGE COURTENAY: But your claim only broadly requires status  
24 information stored with data.

25          MR. McCARTHY: Right.

26          JUDGE COURTENAY: That's all it requires.

1           MR. McCARTHY: Right.

2           JUDGE COURTENAY: If we have a file allocation table on a disk,  
3 it's stored with the data on the disk. It indicates the address and status of the  
4 data, the files on the disk.

5           MR. McCARTHY: Okay. That ignores all of the advantages to  
6 storing it -- to the meaning, to the broadest, reasonable meaning being that  
7 by storing the information with the data then, you know, I have a handful of  
8 advantages.

9           For instance, to get the information and the data, it only takes one  
10 access; not two. So, that increases my data through-put rate.

11          JUDGE MacDONALD: I'm a little concerned with what you're  
12 saying. Essentially you're attempting to indicate an improved function or  
13 structure without ever citing that improved function or structure in the claim.

14          MR. McCARTHY: Well, I disagree. I think storing "A" with "B" is  
15 enough.

16          Like I said, the officer suggested that if I had included the word  
17 "together" that wouldn't be enough. So, I didn't know where that point; and  
18 so, I had to pretty much --

19          JUDGE MacDONALD: How does the storage operation change  
20 based on the information that's being stored?

21          I understand how the other functions you've described change  
22 significantly and that you only have to perform them once rather than twice.

23          MR. McCARTHY: One step; not two.

24          JUDGE MacDONALD: Exactly. But how does a single store  
25 operation change based on the information that's being stored? I don't see  
26 that.

1           MR. McCARTHY: I'm not sure I quite understand the question. The  
2 advantages from storing the information with the data are that, you know,  
3 you eliminate the mapping and the maintenance of the FE table. You get  
4 increased --

5           JUDGE MacDONALD: Let me stop you right there. You said the  
6 advantages that comes from this storage operation and now you're moving to  
7 other functions that are not in the claim and describing how those are  
8 improved. My question is, why is that relevant? Those aren't in the claim.

9           MR. McCARTHY: The advantages go to what the broadest,  
10 reasonable interpretation of storing information with the data means.

11          Our position is that it's unreasonable in view of the enlightenment  
12 given without importing limitations from the spec. There is no  
13 enlightenment from the spec that would motivate or would cause the skilled  
14 artisan to understand that storing the information with the data could mean  
15 storing them in two different logical block addresses given the fact that all  
16 we talk about here is either encoding or -- not encoding -- embedding  
17 or -- I've lost it.

18          JUDGE MacDONALD: Appending.

19          MR. McCARTHY: Appending. Thank you. Either appending or -- if  
20 I could, could we move on to the other claim language?

21          JUDGE MacDONALD: Oh, absolutely. I was about to ask you to  
22 move on because we have some questions as to that.

23          MR. McCARTHY: Thank you.

24          My second point was going to be -- if I had made it through the first  
25 one, my second point would have been that the claim language in claims 8

1 and 15 are distinguishable over the reference for the same reason, meaning:

2 Accompanying with means the same thing as storing with. Okay?

3 So, moving on --

4 JUDGE MacDONALD: Let's back up a second there. What exactly  
5 does "accompanying" mean?

6 MR. McCARTHY: "Accompanying" is explicitly defined in the  
7 specification in relation to the appending language. At page nine, lines 30  
8 through 31, it says: "Generally the present invention accompanies data with  
9 reliability information such as appending or embedding." So, the point is --

10 JUDGE MacDONALD: What is that function? I still don't get what  
11 that function is, the step of accompanying?

12 MR. McCARTHY: Data is either transient or it's stored. What the  
13 claim says, when it's transient, and in this case, when it is stored, the first  
14 information accompanies the first data. Okay?

15 JUDGE MacDONALD: You hit my concern, I think, looking at  
16 claim 8. It was significantly broader than claim 1; and my concern was that  
17 we have a Nuijten situation with respect to claim 8.

18 MR. McCARTHY: But we're not talking about signals whatsoever  
19 here. We're talking about stored data.

20 JUDGE MacDONALD: No, no. But the key word being "transient."  
21 This "accompanying" is transient at some point in the system.

22 MR. McCARTHY: Okay.

23 JUDGE MacDONALD: My concern was that it --

24 JUDGE COURTENAY: And as you describe this term in your  
25 specification, you disclose: "Generally the present invention accompanies

1 data with reliability information, such as (without limitation) appending or  
2 embedding."

3 MR. McCARTHY: Right.

4 JUDGE COURTENAY: So, how are we to construe that term given  
5 your specification says "without limitation?"

6 MR. McCARTHY: Well, I think it expressed -- it explicitly -- it's  
7 consistent in that it explicitly discloses either appending or embedding.

8 JUDGE COURTENAY: But it says, "without limitation," on page 9,  
9 line 31 of your specification.

10 MR. McCARTHY: Yes; and that is a -- that is probably a  
11 written-description problem if we were to ever try to enforce this patent to  
12 cover anything other than appending or embedding. Okay? That's the  
13 extent of the support that I have. It's probably not a good position to be  
14 standing on.

15 JUDGE COURTENAY: Okay.

16 JUDGE THOMAS: That's the only point in the specification you can  
17 justify to support the word "accompanying" in the --

18 MR. McCARTHY: I believe that's the only place that the word is  
19 actually used; yes.

20 JUDGE THOMAS: Do you know that there's no storing function in  
21 claim 8?

22 MR. McCARTHY: Do I know that?

23 JUDGE THOMAS: Yes.

24 MR. McCARTHY: I know the word "storing" is not used explicitly  
25 in claim 8; but I know that when data is stored in my invention, it  
26 accompanies the --

1           JUDGE MacDONALD: Let me make sure of something, Judge  
2 Thomas. Claim differentiation. My understanding is that claim 8 is broader  
3 than claim 1. Is that correct?

4           MR. McCARTHY: I would agree. Yes.

5           JUDGE MacDONALD: Okay.

6           MR. McCARTHY: Okay. Very quickly, there are two more points  
7 that I would like to address before my time is up before you.

8           Moving on to the other part of these claims, in addition to the storing  
9 with, claim 1 also recites that the first information directly indicates the  
10 status of the first data.

11          I call to your attention that the Morgan reference talks about both  
12 check bits and code bits. Right? Well, our invention, as well, talks about  
13 the check bits. The check is the same function as the check bits. So, we're  
14 really limited to considering the code bits, and that's what the office based its  
15 rejection on.

16          Basically what Morgan does is, in block 94 of its figure -- its Figure 2  
17 is a flow chart of an operation for transferring data, for data transfer. Right?

18          So, in block 94, it sets the code bits; and then in block 98, it  
19 determines whether the operation was successful or not. If it was successful  
20 then in block 102 it resets the bits; and if the determination in block 98 is no,  
21 then in 106 it does some post processing to determine, to do some error  
22 correction.

23          So, basically what Morgan is doing is: Let's say we have an operation  
24 with five different steps, A, B, C, D, E. It's going to cook along and it's  
25 going to say, "Oh, here comes operation B. Set the code bits to operation

1   B." That's what it does in block 94; and then it proceeds to perform  
2   operation B.

3           If it is successful in completing operation B, then it resets the bits  
4   back to some default value and waits for the next operation to come along;  
5   say, "E," and does the very same thing again for "E." Right?

6           So, basically the code bits are associated with an operation identifier,  
7   A, B, C, D or E. That's what the pre-determined code bits line up with.

8           I have a reference, a copy of Morgan, a clean copy of Morgan where I  
9   have highlighted 20 explicit places within this patent where it says just that,  
10   that the code bits are an operation identifier in this reference. I can provide  
11   this to the Board if you think it would be helpful.

12          JUDGE COURTENAY: Could you point to just one of those right  
13   now?

14          MR. McCARTHY: The first one is in the abstract, right in the middle  
15   of the abstract. It says, "When such a fault occurs, predetermined code bits  
16   are set to indicate the data operation that was taking place when fault  
17   occurred." And basically, it says that 20 more times within the reference.  
18   Okay?

19          Now, there's 20 instances that the code bits are an operation identifier.  
20   The office has provided no passage from Morgan that says that it's a status  
21   indicator as claimed.

22          The office's position is basically that: Hey, the fact that after a  
23   successful operation, you reset the bits. That infers that the data is okay, the  
24   data is reliable because you didn't have a fault during the operation.

25          What that ignores, however, is that, you know, under a 102 rejection  
26   where we have to show a single reference that discloses all of the features of

1 the recited claim -- all of the recited features of the claim -- the code bit is  
2 set at block 94 before the operation begins.

3 So, according to the office's position, once that code bit is set, the data  
4 is invalid. That's not true. The data is not invalid until we begin to step  
5 through the steps of the process, and when a failure occurs then it keeps the  
6 code set to that value to indicate that there was an error in the process; and  
7 oh, by the way, it could also maybe infer that the data is bad.

8 But the fact is, when you set the code bits before and during  
9 operation --

10 JUDGE COURTENAY: It refers that the data is bad? Doesn't that go  
11 to the status --

12 MR. McCARTHY: But you could not say -- when I set the code bits  
13 in 94, the data is not invalid; but according to the office's position or its  
14 interpretation of the reference, it would have to be invalid at that point.

15 Those code bits are not an indicator of the status of the data. They are  
16 an indicator of the status of the operation. Okay? That's my point.

17 In fact, the portion of the path of the Morgan reference that the office  
18 cites says just that. It says that --

19 JUDGE MacDONALD: Before you go further on this, at that point it  
20 indicates that the operation is failed -- which I agree that's what it says; it  
21 indicates. Doesn't that also indicate that the data is bad at that point?

22 MR. McCARTHY: Well, at that point, I agree.

23 JUDGE MacDONALD: If this operation fails, this data is no longer  
24 reliable?

1           MR. McCARTHY: I would agree, at that point. But what  
2 about -- the code bits are set before the operation even begins. So, is the  
3 data bad at that point?

4           JUDGE MacDONALD: But we're only interested if there is some  
5 point in time where the status bit has this meaning.

6           MR. McCARTHY: I don't know. Under a 102 rejection -- this is not  
7 an obviousness rejection. This is a 102, where that feature has to be  
8 identically disclosed by the cited reference. It's either a data status indicator  
9 or not. If there are times that it is and times that it's not then I think that it's  
10 not --

11          JUDGE MacDONALD: At the point it is a status indicator, how does  
12 it not meet the claim? It's stored. It's in there. It's in the system.

13          MR. McCARTHY: I think it's an inference.

14          Another example is, for instance, in Morgan's figure three -- okay?  
15 This is a completely different operation. This is not a data-transfer  
16 operation. This is a data-reconstruction operation. Okay? In that case,  
17 when there is a failure in blocks 172 and 184, it keeps the code bits set to  
18 that operation and it wipes the data completely out. It sets the data to zero.

19          So, now, according to the office's interpretation of that reference, we  
20 are now indicating that no data is invalid. Okay?

21          JUDGE MacDONALD: I'm looking at the clock here and I think  
22 we're well past the 20 minutes.

23          MR. McCARTHY: Yes.

24          JUDGE MacDONALD: I have some other questions that are not  
25 related to arguments you raised in the brief or issues the examiner raised and

1 I wanted to get those questions in. So, if you could take a couple of minutes  
2 and wrap up then we can ask questions.

3 MR. McCARTHY: My last point would be in claims 8 and 15; and I  
4 thank you for your indulgence.

5 Probably the strongest position that I have before you today is in  
6 claims 8 and 15, in addition to the first information being stored with the  
7 first data. Those claims recite that the first information indicates status of  
8 second data; and if you recall the blocks that we showed of our invention,  
9 we have user data and we have the DRQ bit which is the first information  
10 stored with the data.

11 So, the DRQ bit can indicate the status of the data that it is stored  
12 with. It can also indicate the status of data, or other data; for instance, data  
13 in other blocks is what the specification discloses.

14 The office's position from the flow chart --

15 JUDGE MacDONALD: Let me ask a question here. My  
16 understanding was that's because of the fact that this system has data  
17 redundancy?

18 MR. McCARTHY: That's one of the advantages. Absolutely. By  
19 storing the information with the data, then the DRQ bit can have the same  
20 redundancy as the data itself. Absolutely. Yes.

21 Real quickly, if I can find the correct --

22 (Pause.)

23 MR. McCARTHY: Here it is. The office's position is from figure  
24 two -- and I'm just about done. Just 30 seconds here.

25 In figure two it talks about the first data being -- okay. In this flow  
26 chart, the controller receives a host batch of data and that host data is going

1 to be in a different size block than what the system can use. This system has  
2 an array. So, it's going to convert that host data which is in one size block.  
3 It's going to chop it up into individual blocks and strike it across several disk  
4 drives. Right? So, you have two different size blocks. That's converting the  
5 configuration from the host block to the array block.

6 So, in block 74, we're appending the code bits to the blocks that are  
7 given to the array; but then, the office says the first data is the configured  
8 data. Well, it's one and the same. I mean, the configuration that the  
9 controller does in block 70 is basically to configure the host data so that it's  
10 suitable for use by the array in block 74.

11 So, the position is, there is not a second data. It's one and the same.  
12 The data in blocks 70 and 74 are one and the same.

13 And in fact, the passage cited by the office says that both operations  
14 are done concurrently. Concurrently. This is from column five, lines 56 and  
15 58 of the cited passage. It says, "In conjunction with both converting and  
16 appending the bits." And that's all I have.

17 JUDGE MacDONALD: Okay. Reviewing the record, several  
18 concerns. We had several concerns. These would be new issues of course if  
19 they're in our decision.

20 MR. McCARTHY: Okay.

21 JUDGE MacDONALD: And of course, these are not issues you're  
22 prepared for; so, we understand that your response will have to necessarily  
23 be limited.

24 Particularly I think to claim 1, looking at that, we're concerned. We  
25 don't exactly see how claim 1 is statutory subject matter. We don't see a  
26 transformation. We're looking at the claim and we believe it would cover

1 merely recording this information on a piece of paper because there's  
2 nothing in the claim that limits it to the embodiment that's disclosed. The  
3 method is merely a method for storing data, comprising the step of storing  
4 first information with first data wherein the first information directly  
5 indicates the status of the first data.

6 There's no indication this is in a machine or that it's done by machines  
7 or it's anything. Nothing in the claim is required except connection between  
8 these two pieces of data and that they're stored somewhere.

9 MR. McCARTHY: Right.

10 JUDGE MacDONALD: So, it appears to encompass even mental  
11 processes of memorizing this information.

12 We just want to find out if you have anything you want to say with  
13 regard to that.

14 MR. McCARTHY: Yes. Two things. One, I would say: I would  
15 have to do some quick research. It wouldn't take me more than 15 minutes,  
16 and I could come back to you and give you an affirmative position in terms  
17 of whether or not there is a transformation when you store data. I think  
18 there's some question to that. I would have to look into that.

19 I think when the data is stored-to, then there is a transformation.

20 But I would say, my second point, if that issue had come up, if there  
21 was a 101 issue such as that during prosecution, the claim would have gladly  
22 been amended to --

23 JUDGE MacDONALD: Oh, I have no doubt because it's clear your  
24 disclosure has a statutory process in it, within the accessing the hard drive  
25 and the reading and write. There's no doubt about that.

26 MR. McCARTHY: Right. Right.

1           JUDGE MacDONALD: It's just the issue of: This claim is so broad.  
2   It appears to encompass a process that doesn't require a transformation and  
3   in fact just the conception of doing this is covered by the claim.

4           MR. McCARTHY: Well, when a case is made special for accelerated  
5   examination such as this, the amendments don't come easily because there's  
6   a downside to that; but this would not have prevented that.

7           If that were the only thing standing in the way of getting that issue  
8   addressed, we would have done that.

9           JUDGE MacDONALD: And the second concern is: Because of the  
10   breadth of it -- it's a single-step process of storing information, again with no  
11   machine -- we have a concern about the scope of enablement. This covers  
12   everything and every way of storing these two pieces of information. It's not  
13   commensurate in scope with the disclosure.

14          MR. McCARTHY: My client likes me to give raw claims.

15          JUDGE MacDONALD: That's a reasonable response. But we have  
16   some concerns.

17          Of course, anything we put in the decision with regard to these -- of  
18   course, that gives you the opportunity to either take it back to the examiner  
19   and reopen prosecution within this --

20          MR. McCARTHY: Absolutely. And the response would be the  
21   same. You know, if it were a real issue and the claim needed to be made  
22   more particular, you know, and limited to data transfer within a distributed  
23   storage system, those kinds of amendments could certainly be worked out. I  
24   have no problem with that at all.

25          I would say this, within the distributed-storage realm, this is quite  
26   novel and that's why the claim appears as broad as it does to you.

1           JUDGE MacDONALD: Yes. And I think with regard to your  
2 disclosure, we didn't have any problem. It's different than the related art,  
3 slash, prior art the examiner put forth in terms of what's disclosed.

4           I think the examiner's concern with respect to the art rejection and  
5 ours with respect to these other issues is simply is the breadth of the claim  
6 and what it does cover.

7           MR. McCARTHY: Yes; and in most cases we're able to work  
8 through those issues. In this case, we just weren't able to come to a meeting  
9 of the minds and address those kinds of issues; not that they were brought  
10 up.

11           JUDGE THOMAS: Any questions, Judge Courtenay?

12           JUDGE COURTENAY: No.

13           MR. McCARTHY: Well, thank you very much for your indulgence.  
14 Gentlemen, have a good day.

15           JUDGE MacDONALD: Thank you.

16           (Whereupon, at approximately 2:15 p.m., the proceedings were  
17 concluded.)